United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT

606

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 22,217

GREENLEE R. TAYLOR,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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January 31, 1969

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TABLE OF AUTHORITIES

ISSUES PRESENTED*

I.

Whether the trial court held that the confrontations at the precinct station were not a violation of due process?

II.

Whether defense counsel waived the right to a pre-trial hearing on the violation of due process?

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*This is an original appeal. Rule 17(c)(2)(iii), General Rules, supplementing Federal Rules of Appellate Practice.

CONSTITUTIONAL PROVISIONS

Fifth Amendment:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

UNITED STATES COURT OF APPEALS
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GREENLEE R. TAYLOR,

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APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

On January 25, 1968, in the United States District Court for the District of Columbia, appellant, Greenlee R. Taylor, was convicted of Housebreaking and Grand Larceny. Notice of Appeal from the final decision was filed in a timely manner, and on July 22, 1968 the District Court granted appellant's petition for leave to prosecute his appeal without prepayment of costs. The jurisdiction of this Court is properly invoked pursuant to the rules of Court, and 28 U.S. Code § 1291.

On June 15, 1967 a duly sworn Grand Jury returned two indictments for housebreaking and grand larceny.

On January 24, 1968 the District Court granted a mistrial because some of the jurors were in a position before commencement of the trial to observe police photographs of the appellant.

On January 25, 1968 a jury found the appellant guilty of housebreaking and grand larceny. On June 28, 1968 appellant was sentenced pursuant to Section 5010(b), of the Federal Youth Corrections Act. Notice of appeal was filed in a timely manner.

STATEMENT OF THE CASE

Procedural Background

In the early morning hours of March 31, 1967 the Howard Clothing Store at 3036 Fourteenth Street, Northwest was broken into and several articles of clothing and some clothing dummies were stolen. Mr. Edward Harris and Mr. Lawrence Pruitt, whom the government later introduced at trial as witnesses, were standing in the vicinity of the store and observed a group of young men pass by them. Mr. Harris and Mr. Pruitt noticed that some of the men were carrying clothing mannequins and articles of clothing.

Two police officers who were patrolling the area near the store heard some glass breaking. Upon rounding the corner onto Fourteenth Street from Irving Street, Northwest the two officers observed several men coming out of the entrance ot Howard Clothes, Inc. The two officers approached Mr. Harris and Mr. Pruitt and conversed with them for a short while. Subsequently the appellant and another boy, who later turned out to be a juvenile, were apprehended by the police officers and transported to the Tenth Precinct. Shortly thereafter, Mr. Harris and Mr. Pruitt were brought to the Tenth Precinct where they observed the appellant and the juvenile.

Trial

After the jury had been empaneled and sworn defense counsel requested a bench conference (Tr. 6-7). He asked that a hearing be held out of the presence of the jury to determine whether or not the identification of appellant fell within the standards set out in the Wade case.[1/] (Tr.7) Counsel was aware that the government intended to call as witnesses Mr. Harris and Mr. Pruitt, the two men who had been in the vicinity of the Howard Clothing Store in the early morning hours of December 31, 1967. The Court questioned the attorney for the government about the confrontation. The government attorney stated that the witnesses had been taken to the precinct about 15 or 20 minutes after the incident and had seen the defendant and another man (Tr. 8).

The Court cautioned the government's attorney not to mention the circumstances of the prior identification in his opening statement, but defense counsel expressed concern over any subsequent use of the identification during the trial. The government attorney replied that:

1/ Counsel was referring to the case of Wade v. United States, 388 U.S. 218 (1967).

> It was my intention, Your Honor, not even to introduce the prior identification at the precinct, but I thought the subsequent identification in the courtroom, if they make one, would be satisfactory (Tr. 8).

The conference concluded with the court stating its approval of the procedure and defense counsel expressing his gratitude.

During the trial both Mr. Harris and Mr. Pruitt were called as witnesses for the government and asked to identify the appellant. Both men pointed out in court the appellant as being in the group of five or six males they had observed carrying articles of clothing and some clothing dummies. Defense counsel did not object to the in-court identification of the appellant by either witness.

SUMMARY OF ARGUMENT

I. After defense counsel had requested a hearing concerning a pre-trial confrontation between two witnesses and the accused, the Court inquired into the manner of the identification. However, the only fact revealed to the court and the defense attorney was that the confrontation took place at the precinct station.

The Court failed to evaluate the totality of the circumstances surrounding the confrontation and did not rule on whether the appellant's due process rights had been violated.

II. Defense counsel's request for a hearing out of the presence of the jury was clear and unequivocal and his acquiescence to the court's action without formal objection did not constitute a waiver.

ARGUMENT

I.

THE PRE-TRIAL CONFRONTATION MAY HAVE DENIED THE APPELLANT DUE PROCESS OF LAW.*

In three cases decided June 12, 1967 the Supreme Court dealt with the manner in which pre-trial identifications were used in court.[2/] In Stovall the Court held that the Sixth Amendment right to counsel during pre-trial confrontations would be given only prospective effect.

Appellant's arrest took place on March 31, 1967 and his trial was held on January 24 and 25, 1968. Therefore, since the pre-trial confrontation in this case occurred prior to Stovall it is not appellant's contention that the pre-trial identification might have been violative of his Sixth Amendment right to counsel. Rather appellant claims that the pre-trial confrontation by the same witnesses who identified him during the course of the trial might have been violative of his Fifth Amendment right to due process of law.

2/ United States v. Wade, Id.; Gilbert v. California, 388 U.S. 263; Stovall v. Denno, 388 U.S. 293 (1967)

* Pages 1-23 apply to this Argument

A. The Record Reveals Only That A Pre-trial Confrontation Took Place At The Precinct Station.

Part II of the Stovall opinion established the proposition that

> ... a claimed violation of due process of law in the conduct of a confrontation depends on the totality of the circumstances surrounding it...[3]

The record of the proceedings in the trial court fails to reveal the conditions under which the government's two witnesses, Mr. Harris and Mr. Pruitt, confronted the appellant at the precinct station a short time after he was arrested. The only evidence available consists of a statement by the government's attorney given in response to the court's inquiry as to the proposed method of identification.

> MR. SCHOENFELD: Your Honor, this occurred on March 31st.
>
> The witnesses were taken to the precinct about 15 or 20 minutes after the incident, after these men had been caught, and both of them saw the defendant and another man there at the precinct. (Tr. 8)

The record does not reveal any other circumstances surrounding the confrontation at the precinct station.

3/ Stovall v. Denno, supra at 302 (1967).

B. The Trial Court Failed To Rule Upon Whether The Pre-trial Identification Was Violative Of Due Process.

Following the remarks of the government's attorney concerning the viewing of appellant by the two witnesses, he went on to state:

> I think the fact that it occurred on March 31st pretty much rules out a Wade and Gilbert problem, although perhaps the due process still remains. (Tr. 8)

The court cautioned the government's attorney not to mention the pre-trial confrontation during his opening remarks, but upon defense counsel's expression of concern with the subsequent in-court identification the government's attorney replied:

> It was my intention, Your Honor, not even to introduce the prior identification at the precinct, but I thought the subsequent identification in the courtroom, if they make one, would be satisfactory.
>
> THE COURT: All right.
>
> MR. KEATS: Thank you.
>
> (END OF BENCH CONFERENCE) (Tr. 8)

The two witnesses did in fact identify in court the appellant as one of the men they had observed carrying a clothing dummy and a suit immediately after having heard the shattering of glass (Tr. 14,23).

Once the issue of the pre-trial identification had been raised by defense counsel and revealed by the government's attorney the court should have inquired into the circumstances surrounding the confrontation.

In United States v. O'Connor, 282 F. Supp. 963 (D.C. D.C. April 9, 1968) Judge Gasch pointed out in great detail the factors which a trial judge must consider in light of Stovall and in Wright v. United States, No. 20,153 (D.C. Cir., January 31, 1968).[4/]

4/ 1. Was the defendant the only individual that could possibly be identified as the guilty party by the complaining witness, or were there others near him at the time of the confrontation so as to negate the assertion that he was shown alone to the witness?

2. Where did the confrontation take place?

3. Were there any compelling reasons for a prompt confrontation so as to deprive the police of the opportunity of securing other similar individuals for the purpose of holding a line-up?

4. Was the witness aware of any observations by another or other evidence indicating the guilt of the suspect at the time of the confrontation?

5. Were any tangible objects related to the offense placed before the witness that would encourage identification?

6. Was the witness' identification based on only part of the suspect's total personality?

7. Was the identification a product of mutual reinforcement of opinion among witnesses simultaneously viewing defendant?

The only fact brought to the attention of the court was that the alleged confrontation took place at the precinct station (Tr. 8).

There is no indication that a line-up was held. Without a showing of necessity to conduct an immediate confrontation, this, alone, has been argued to be a denial of due process.[5/]

This Court has also suggested:

> ... that the Supreme Court has, at the least, cast an unmistakable shadow across those post-arrest single confrontations at the police station where formal lineups are a feasible alternative.[6/]

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8. Was the emotional state of the witness such as to preclude objective identification?

9. Were any statements made to the witness prior to the confrontation indicating to him that the police were sure of the suspect's guilt?

10. Was the witness' observation of the offender so limited as to render him particularly amenable to suggestion, or was his observation and recollection of the offender so clear as to insulate him from a tendency to identify on a less than positive basis?

5/ Wright v. United States, No. 20,153 at 8 (D.C. Cir., January 31, 1968) (dissent by Bazelon, CJ.)

6/ Clemons, et al v. United States, No. 19,846 (D.C. Cir. December 6, 1968).

The confrontation may have occurred within a short time of the appellant's arrest. However, this fact alone would not be sufficient to uphold the propriety of the identification.7/

In failing to investigate the circumstances of the pre-trial identification the court denied appellant the opportunity to prove that the confrontation may have been so unnecessarily suggestive so as to taint his conviction.

The fact that the government's attorney represented that the circumstances of the pre-trial identification would not be revealed during the trial did not preclude the court from making a pre-trial determination as to a violation of due process.

7/ In Wise v. United States, 127 U.S. App. D.C. 279,282, 383 F.2d 206 (1967), this Court ruled that the circumstances of the fresh identification were not "inherently a denial of fairness." However, the Court had sufficient facts before it to reach such a decision. Furthermore, "the observors and the actors were limited to those that were present at the scene and time of the offense and the chase." Supra, at 282.

It appears from the record that appellant was confronted at the Tenth Precinct, not at the scene of the crime [Tr. 8].

C. The Record Must Be Augmented By The District Court.

The record here on appeal does not contain sufficient evidence of the circumstances surrounding the pre-trial confrontation to determine if there was a denial of due process. Therefore, the Court should request the District Court to make findings of fact and conclusions of law with respect to the following:

(1) Time, place, circumstances and legality of appellant's arrest;

(2) Circumstances surrounding the pre-trial identification of the appellant by the witnesses, Harris and Pruitt;

(3) Admissibility of evidence of pre-trial identification by the witnesses Harris and Pruitt;

(4) Admissibility of courtroom identification by the witnesses Harris and Pruitt.[8/]

8/ In Clark v. United States, No. 21,001 (D.C. Cir., December 6, 1968), this Court remanded the case after the first hearing to the District Court for an expansion of the record. The remand order is set forth in Clemons, et al v. United States, supra, n.14 at 22.

In Wright v. United States, supra, this Court refused to rule on the merits of a due process challenge without amplification of the record. Although it was clear that the suspect was presented to the witness at the police station, that no line-up was held, and that prior to the

If no due process violation is discovered by the trial court, appellant's conviction may stand. However, if a violation is found, the Court would be required to apply the standards set forth in Wade[9/] and Gilbert[10/] and explained in Wright[11/] and O'Connor.[12/]

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confrontation the witness noticed a car outside the station which she had earlier identified as being involved in the larceny, the Court remanded the case to the District Court for an evaluation of the appellant's claim.

9/ Wade v. United States, supra at 239-42.

10/ Gilbert v. California, supra at 272-74.

11/ Wright v. United States, supra at 9.

12/ United States v. O'Connor, supra at 965.

ARGUMENT

II

DEFENSE COUNSEL DID NOT WAIVE THE RIGHT TO A FULL AND COMPLETE HEARING ON THE ISSUE OF DUE PROCESS.*

A. Defense Counsel's Request For A Hearing Out of The Presence of The Jury Was Clear And Unequivocal.

Since defense counsel was aware that the government intended to introduce the testimony of two witnesses who had observed a group of young men carrying items of clothing and store dummies, he asked the court to determine whether the identification fell within the standards set out in the Wade case (Tr.7).

When questioned by the court as to the Wade standards the following colloquy ensued:

> MR. KEATS: Counsel was not present, the fact that it might be--
>
> THE COURT: That counsel wasn't present when somebody broke into the premises?
>
> MR. KEATS: No, the identification -- I am just concerned with the identification made later (Tr. 7).

The Court then asked the government's attorney to explain the circumstances of the confrontation.

After doing so the government's attorney stated:

> I think the fact that it occurred on March 31st pretty much rules out a Wade and Gilbert problem, although perhaps the one process still remains. (Tr. 8).

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*Pages 1-8 apply to this Argument

Despite defense counsel's failure to cite the Stovall case instead of the Wade case, the issue was squarely before the court. Counsel did not have an opportunity to explain his objection. However, the government's attorney brought to the court's attention the issue of due process. The court should have granted defense counsel's request for a hearing on the issue of due process.

B. Trial Counsel's Acquiescence To The Court's Action Without Formal Objection Did Not Constitute A Waiver.

After the Court cautioned the government's attorney not to mention any of the circumstances of the pre-trial confrontation "until we come to that" (Tr. 8), the following discussion took place:

> MR. KEATS: That is what I am concerned about.
>
> MR: SCHOENFELD: It was my intention, Your Honor, not even to introduce the prior identification at the precinct, but I thought the subsequent identification in the courtroom, if they make one, would be satisfactory.
>
> THE COURT: All right.
>
> MR. KEATS: Thank you.

By raising the issue of the pre-trial confrontation prior to the commencement of the trial, defense counsel sought a ruling from the court on the legality of the

identification. As a matter of trial tactics he could have chosen either not to question the propriety of the precinct confrontation, hoping to bring it out later during the cross-examination of the witness[13/] or he could have waited until the witness identified the defendant in court and then requested a hearing out of the presence of the jury. But here defense counsel chose to raise the issue prior to trial and having done so the court should have made a full and complete inquiry into the circumstances surrounding the precinct confrontation and determined whether there had been a violation of due process.

There is no indication on the record that the court even considered the issue of due process, but rather mistakenly agreed with the government's promise not to mention the precinct confrontation.

Defense counsel had no choice but to accept the court's ruling.

13/ See Clemons, et al v. United States, supra at 9.

CONCLUSION

Appellant prays that this Court reverse and remand for a new trial or, in the alternative, to remand the case to the District Court for augmentation of the record.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Brief has been personally served at the Office of the United States Attorney, Appellate Division, United States District Court, Washington, D. C. this 31st day of January, 1969.

J. Garvan Murtha
J. GARVAN MURTHA

United States Attorn

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TABLE OF CASES

OTHER REFERENCES

ISSUE PRESENTED *

In the opinion of appellee, the following issue is presented:

Whether the use of eyewitness identification testimony in a housebreaking-larceny prosecution constituted harmless error, if error at all, when appellant's conviction was otherwise supported by overwhelming evidence of appellant's guilt.

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* This case has not previously been before this Court.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,217

GREENLEE R. TAYLOR, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Summary of Proceedings

By indictment filed June 15, 1967, appellant was charged with one count of housebreaking and one count of grand larceny (22 D.C. Code §§ 1801, 2201). After a three-day trial beginning January 24, 1968, the Honorable John J. Sirica presiding, the jury returned a verdict of guilty as charged on each count. On June 28, 1968, appellant was sentenced under the Federal Youth Corrections Act pursuant to 18 U.S.C. § 5010(c).

The Trial

On March 31, 1967, at about 1:00 a.m., Edward Harris and Lawrence Pruitt were standing together in front of 3030 - 14 Street, N.W. when they heard a window crash at the Howard Clothing Store at 3036 - 14 Street, N.W. (Tr. 11-12, 22, 64). They saw five-six males leave the store carrying clothing and mannequins; the group proceeded past them south on 14th Street (Tr. 13-23). The street was deserted except for this group and policemen who arrived shortly thereafter (Tr. 28). At trial, both Harris and Pruitt identified appellant as one of the men carrying a mannequin, with Harris adding that appellant also was carrying a suit of clothing (Tr. 18, 24).

Police Officers Stephen Micciche and Lawrence Mason were walking on the 1400 block of Irving Street, N.W., ten feet from the corner of 14th Street, when they heard the glass crash (Tr. 30-31). They immediately turned the corner and saw five-six males leaving the entranceway[1] of the store, some carrying clothing and mannequins (Tr. 31). While following the group south on 14th Street, the officers called for assistance over a footman's radio (Tr. 32). At 14th and Harvard Streets, the group spotted the two officers following them and raced away south on 14th Street, with Micciche and Mason giving chase (Tr. 33-34). At 14th and Fairmont Streets, three or four members of the group split off west onto Fairmont Street, with appellant and one Bennett, a juvenile, crossing to the East side of 14th Street and fleeing south (Tr. 34). When appellant, who had never escaped from the officers' sight after leaving Howard's, was finally apprehended at 14th and Euclid Streets, he had in his possession a suit and shirt which the manager of Howard's identified at trial as having been in Howard's the early morning hours of March 31 (Tr. 48, 64, 71, 72). Bennett, who had dropped various items of Howard's clothing during the chase, was caught one block away (Tr. 39, 41-42). Although the

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[1] The entranceway was a corridor set in about twenty feet from the building-line (Tr. 69).

clothing Bennett had taken and four mannequins which had been strewn between Howard's and 14th and Harvard Streets were later recovered, property stolen by those in the group who had escaped down Fairmont Street was never found (Tr. 71-78).

In defense, appellant and a friend, James Jenkins, testified that while they were returning home with other friends from a dance via 14th Street and were four-five stores north of Howard's, they heard a window smash and saw a group of about twenty people pour out of the store (Tr. 88, 89, 98-104, 121, 138). They further testified that they simply kept walking south behind the group, that they never ran from the police, and that appellant was not holding any suit when arrested (Tr. 92, 107-108, 115, 116, 125, 133).

ARGUMENT

Overwhelming evidence of appellant's guilt rendered the contested eyewitness identification harmless error if error at all.

Appellant contends that trial counsel properly raised the issue of eye-witness identification under *Stovall* v. *Denno*, 388 U.S. 293 (1967), during the following colloquy:

> MR. KEATS [defense counsel]: Your Honor, there are two witnesses who, I understand, were witnesses to the actual breaking in and who are going to be called by the Government to testify.
>
> Before they testify, and before anything is stated in the opening statement about the identification they made, I would like to move at this time for a hearing out of the presence of the jury, under the Wade case.
>
> THE COURT: Why?
>
> MR. KEATS: To determine whether or not the identification they made falls within the standards set out in the Wade case.
>
> THE COURT: What are the standards set out in the Wade case?

MR. KEATS: Counsel was not present, the fact that it might be—

THE COURT: That counsel wasn't present when somebody broke into the premises?

MR. KEATS: No, the identification—I am just concerned with the identification made later.

THE COURT: What kind of identification do you have, Mr. Schoenfeld [Government counsel]?

MR. SCHOENFELD: Your Honor, this occurred on March 31st.

The witnesses were taken to the precinct about 15 or 20 minutes after the incident, after these men had been caught, and both of them saw the defendant and another man there at the precinct.

I think the fact that it occurred on March 31st pretty much rules out a Wade and Gilbert problem, although perhaps the due process still remains.

Of course, the police had no way of knowing at the time what the law would be a few months hence.

THE COURT: Then you don't have to make any mention of that in your opening statement until we come to that.

MR. KEATS: That is what I am concerned about.

MR. SCHOENFELD: It was my intention, Your Honor, not even to introduce the prior identification at the precinct, but I thought the subsequent identification in the courtroom, if they make one, would be satisfactory.

THE COURT: All right.

MR. KEATS: Thank you. (Tr. 7-8.)

Appellant further contends that the court's failure to rule upon the due process implications of the pre-trial confrontation warrants remanding the case to the court below.[2]

Because the proceedings below do not reveal the circumstances surrounding the pre-trial confrontation beyond the excerpt quoted above, and the court below did not consider whether Harris' and Pruitt's in-court identifications

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[2] Appellee does not contest appellant's contention that counsel's reference to *Wade* rather than *Stovall* sufficiently apprised the court below of the necessity of a *Stovall* hearing. *Mendoza-Acosta* v. *United States*, D.C. Cir. No. 21,754, February 11, 1969.

had a basis independent of the post-arrest confrontation, appellee is in no position to defend the propriety of either the confrontation or, consequently, of the eyewitness identification. However, if the evidence "viewed in the light most favorable to the Government's position" [3] meets the *Chapman* [4] standard for harmless error, this Court should affirm.

The facts in the instant case strikingly parallel the facts of two recent cases in which this Court affirmed convictions under *Chapman* without reaching the claim of improper eyewitness identification. In *Solomon* v. *United States*, D.C. Cir. No. 22,155, February 12, 1969, this Court found that identification at trial by the complainant in a robbery case was harmless error, if error at all, where the defendant was identified by a second eyewitness, where the stolen goods were found on the path of the defendant's flight, and where the challenged identification was made by a complainant with only limited capacity to observe. In *McCloud* v. *United States*, D.C. Cir. No. 21,867, October 31, 1968 (unpublished opinion), this Court similarly found harmless the improper identification of the defendant by a robbery victim when the defendant was found hiding near the scene of the crime 35 minutes after the crime, near a gun and possessing $6,000 in checks drawn to the victim's company.

The instant facts are equally compelling. Whereas McCloud was found hiding near the scene of the crime with its proceeds half-an-hour after the crime, appellant here was arrested running from the actual scene of the crime with its proceeds; whereas McCloud was found near what may have been an instrumentality of the crime, appellant here was arrested near additional uncontro-

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[3] *Crawford* v. *United States*, 126 U.S. App. D.C. 156, 158, 375 F.2d 332, 334 (1967); *see also Curley* v. *United States*, 81 U.S. App. D.C. 389, 160 F.2d 229, *cert. denied*, 331 U.S. 837 (1947).

[4] *Chapman* v. *California*, 386 U.S. 18, 24 (1967) ("[B]efore a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt . . . .").

verted proceeds of the crime. The fact that the instant case involved two rather than one questioned eyewitnesses is more than neutralized by the fact that the instant conviction was additionally supported by the testimony of Officers Micciche and Mason, who saw appellant leave the entranceway of the store and followed him until the arrest.

Similarly, the facts of the case at bar strikingly parallel those of *Solomon*. In both cases, the defendant was seen fleeing the scene by police, who never lost sight of the suspect before his capture; in both cases, the testimony of the challenged eyewitnesses was merely cumulative to unchallenged eyewitness testimony; and while the challenged eyewitness testimony in *Solomon* was relatively weak, that eyewitness testimony involved both precinct and in-court identifications, whereas in the case at bar Harris and Pruitt made only in-court identifications. In short, the instant case against appellant was exceptionally strong. He was seen leaving Howard's entranceway by two policemen; ran from the scene with his partners; never escaped from the officers' view; and was apprehended while wearing one item of stolen apparel, carrying a second, and not far from the scene of additional items dropped by his companion. Under those circumstances, the identifications by Pruitt and Harris were harmless.

CONCLUSION

WHEREFORE, appellee respectfully submits that the judgment of the District Court should be affirmed. If, however, this Court rules that the challenged identifications were not harmless, appellee respectfully submits that the case should be remanded to the District Court for a determination of the propriety under *Stovall* of the post-arrest confrontation and, if that confrontation is found violative of *Stovall*, for a determination of independent origin of the in-court identifications. If the standards of *Stovall* were met, or, if not, if the in-court identifications

were supported by independent origin, the conviction should stand. See *Wright* v. *United States*, D.C. Cir. No. 20,153, January 31, 1968.

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